COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 713 of 2001

National Insurance Company Ltd. …… **Appellant.**

Versus

Surendra Prakash Sharma
and others. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 05-03-2001, passed in M.A.C. Petition No. 71 of 1997, Surendra Prakash Sharma and another Vs. National Insurance Co. Ltd. and others, by the Motor Accident Claims Tribunal/Additional District Judge, Dehradun ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 3,00,000/- in favour of the claimant-respondent no. 1 and 2 as against the Opposite Party No.1 – appellant. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of quantum of compensation and on the findings on rash and negligent driving of the vehicle in question.

Facts in brief are that a motor accident had taken place 2.12.1996, when the claimants were going on their Hero Puk Moped No. U.P. 97-C/2602 from Mohabowala from Dehradun. Claimant No. 1 was driving the Moped and claimant no. 2 was sitting as pillion rider. The motor accident took place in front of Contunshia School at Majra (Dehradun) when a Jeep No. H.R.-22-0559 driven rashly and negligently by its driver dashed the Moped from the opposite direction, with the result the claimants sustained

injuries and were taken to hospital. Later-on, they were admitted in Doon Nursing Home at Hardwar Road for treatment. The right leg of the claimant no.1 was amputated and he suffered permanent disability to the extent of 65% and damage to his Moped. Hence, claim petition under Section 166 of the Act has been filed. The Opposite Parties contested the claim petition, filed their written statements. On the pleadings of the parties, the learned Tribunal framed as many as 9 Issues in the case. Issue No.1 related to rash and negligent driving by the driver of Jeep in question. Issue No. 2 related to relief to claimant no. 1. Issue No.3 related to relief to claimant no.2. Issue No. 4 related to liability of the Insurance Company-appellant. Issue No. 5 related to maintainability of claim petition against Insurance Company. Issue No. 6 related to ultimate relief. Issue No. 7 related to driving of the offending vehicle by O.P.No.4. Issue No. 8 related to maintainability of petition on two causes of action as alleged by Insurance Company and Issue No. 9 was also framed on the plea of the appellant about liability.

Claimant-respondents 1 and 2 have produced as many as five witnesses in the case and have filed documentary evidence. On the other hand, three witnesses have been examined on behalf of the opposite parties. They have also filed documentary evidence. After hearing both the parties and considering the evidence, both oral and documentary, on record, the learned Tribunal has held that the accident in question resulting into injuries to the claimants was caused by rash and negligent driving of Jeep involved in the accident. The Tribunal while deciding Issue Nos. 3, 5 and 8 has held that the claim petition is legally maintainable. On Issue Nos. 4, 7 and 9, the learned Tribunal has held that the vehicle involved in the accident was being driven by O.P.No.4-respondent no.5, Jagdish Raj Bansal, who was arrayed as party subsequently by the claimants after filing of written statements by O.P.Nos. 2 and 3 (Respondent Nos. 3 and 4) and that too on 13.10.1998. Learned Tribunal has also held that the driver of the offending Jeep was holding a valid driving licence at the time

of accident. It has also been held that no breach of conditions of policy has been committed, therefore, the Insurance Company was liable to indemnify the registered owner. On Issue Nos. 2 and 6 after considering the material before the Tribunal, it has been found that the claimant no.1 had spent Rs. 45000/- on his treatment and a sum of Rs. 25785/- towards purchase of artificial limb, therefore, claimant-respondent no.1 was found to be entitled towards medical expenses and ultimately, the Tribunal has awarded a sum of Rs. 2,80,000/- to claimant no.1 and a sum of Rs. 20,000/- to claimant no.2, wife of claimant no.1. Accordingly, the claim petition has been decreed for a sum of Rs. 3,00,000/-, as mentioned earlier.

We have heard learned counsel for the appellant, Mr. Bindesh Kumar Gupta, as well as learned counsel for the respondent nos. 1 and 2, Mr. Sunil Kumar Jain, and have carefully examined the material before us including the impugned judgment and award.

It has been submitted before us that the findings regarding rash and negligent driving recorded by the learned Tribunal are not based on evidence on record and that the quantum of compensation is highly excessive, therefore, it has been argued that the impugned judgment and award is not sustainable.

It is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section(2) of Section 149 of the Motor Vehicles Act, 1988. The law provides

that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Vs. Nicolletta Rohtagi and others" [(2002) 7, Supreme Court Cases, 456].*** In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the Apex Court reported in ***(2002)7, S.C.C. 456 (supra),*** which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

It has been lastly argued before us that in the present case, provisions of Section 170 of the Act are available to the appellant, therefore, the appellant is at liberty to take all the defences as available to the insured. We have gone through the provisions of 170 of the Motor Vehicles Act. This argument is devoid of merit for the simple reason that the appellant has not been granted permission under Section 170(b) of the Act by the Tribunal. Moreover, no application before the Tribunal to avail such defences has been moved. This argument has to be ignored outright.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court be transmitted to the Motor Accident Claims Tribunal concerned. The claimant-

respondent nos. 1 and 2 shall be at liberty to withdraw the amount, if any.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP